IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6795 OF 2003

Shri Eknath Haribhau Shelar & Ors. : Petitioners

V/s.

Shri Arjun Dhondiba Tapkir & Ors. : Respondents

...

Mr.G.S. Godbole for the petitioners.

Mr.P.S.Dani for respondent Nos.1 to 6 and 8 to 11.

...

CORAM : S.A. BOBDE, J.

February 17, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Dani, learned counsel for respondent Nos.1 to 6 and 8 to 11, appears and waives service of rule.

Heard by consent.

2. The petitioners have sued the respondents for a declaration that the sale deed dated 29.5.1974 is void ab initio and not binding upon them. In that suit, they amended the plaint and also sought partition, as a result of which the Court framed some additional issues. Respondent Nos.1 to 6 applied for deletion of those

issues. The trial Court has by order below exh.221 permitted the deletion of the issues framed by it on 27.8.2002. Those issues said to have been framed on 27.8.2002 as appearing at exh.'H' to the petition are as follows:-

"8) Whether there is consideration for the sale deed dated 29/5/1974?

9) Do the Defendants No.1 to 6 prove the legal necessity of the joint family for sale deed dated 29/5/1974?

10) Whether the sale deed executed by Defendants No.1 to 6 (Dt. 12/6/1996) are legal and binding upon Plaintiffs?

11) Do the Defendants No.1 to 6 prove that the suit of the Plaintiffs is barred by limitation?

12) Whether the Plaintiffs are entitled for permanent injunction?"

These issues have been allowed to be deleted. Curiously, according to the learned counsel for respondent Nos.1 to 6 and 8 to 11 Mr.Dani, this deletion was unwarranted and the respondents represented by him have no objection to those issues remaining on record. According to him, there are

two other issues which are framed but have not been reproduced by the petitioners. This has led to an unusual situation. The respondents at whose instance the trial Court has allowed deletion of the issues framed on 27.8.2002 states that these issues need not have been deleted and he could have applied for deletion of those issues. He, however, seeks to justify the order on the ground that two other issues which are not reproduced in the petition have been rightly deleted. Having regard to the above situation, I consider it expedient in the interest of justice to set aside the impugned order. The trial Court is directed to decide the respondents' application for deletion of the specific issues mentioned in the body of the petition afresh, in accordance with law. Likewise, the petitioners shall be at liberty to make such an appropriate application for amendment as may be advised.

3. In the result, the rule is made absolute.

Sd/-

S.A. BOBDE, J.